

COLORADO DEPARTMENT OF HEALTH CARE POLICY & FINANCING

1570 Grant Street, Denver, CO 80203-1818 • (303) 866-2993 • (303) 866-4411 Fax John W. Hickenlooper, Governor • Susan E. Birch MBA, BSN, RN, Executive Director

February 20, 2013

Cindy Mann, Director
Center for Medicaid and CHIP Services
Centers for Medicare & Medicaid Services
Department of Health and Human Services,
Attention: CMS-2334-P
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

RE: CMS-2334-P Medicaid, Children's Health Insurance Programs, and Exchanges; Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes for Medicaid and Exchange Eligibility Appeals and Other Provisions Related to Eligibility and Enrollment for Exchanges, Medicaid and CHIP, and Medicaid Premiums and Cost Sharing

Dear Ms. Mann:

I am writing to you on behalf of Colorado's single state Medicaid agency, the Department of Health Care Policy and Financing to provide comment related to CMS-2334-P Medicaid, Children's Health Insurance Programs, and Exchanges; Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes for Medicaid and Exchange Eligibility Appeals and Other Provisions Related to Eligibility and Enrollment for Exchanges, Medicaid and CHIP, and Medicaid Premiums and Cost Sharing proposed regulations to implement specific provisions of the Affordable Care Act.

As you are aware, Colorado plans to pursue the optional Medicaid eligibility expansion and is already well on its way to implement a state-based Health Insurance Marketplace so we share CMS' view of the importance of this essential guidance for proceeding with those initiatives, as well as ensuring successful implementation of all the health insurance coverage changes scheduled to be effective January 1, 2014. Colorado notes that limiting the comment period to 30 days has likely compromised the depth and comprehensiveness of our analysis and identification of the vast array of associated policy considerations and therefore strongly suggests that CMS consider promulgating interim final rules to allow additional opportunity for input. In addition to this overarching concern, Colorado has specific comments on the proposed regulations as follows:

§430.12 Submittal of State plans and plan amendments. Colorado shares CMS' view of the value of automating State plans but strongly disagrees with the proposed one year timeframe to reach full compliance. Colorado has considerable experience with the challenges associated with transitioning home and community

based services (HCBS) waivers to MACPro and anticipates similar challenges. In Colorado's experience it will take individuals knowledgeable about the program areas to input the State plan, necessarily diverting limited State resources from the many tasks associated with implementing provisions of the Affordable Care Act.

- §431.211 Advance notice. Colorado appreciates the proposed change's recognition of expanded options for communication with applicants and beneficiaries but is concerned about ensuring access to fair hearing processes when there is a discrepancy between preferred modes of communication expressed by the applicant/beneficiary and an authorized representative. Please clarify CMS' expectation of how such preference discrepancies are to be handled by states. Colorado strongly suggests revising the language at § 435.918 to explicitly address this concern.
- §431.221 Request for hearing. Colorado notes its current practice for compliance with federal guidance relies upon written documentation to ensure that requests for hearing are made only by the applicant/beneficiary or a properly designated authorized representative. Please clarify CMS' expectations for how states may demonstrate continued compliance with that assurance when requests are made via telephone, through commonly available electronic means, or via the internet Web.
- §431.224 Expedited appeals. Please clarify whether the requirement for expedited appeals applies equally to non-MAGI populations whose Medicaid eligibility may be based upon multiple criteria such as assets, disability status, and functional level of care, many of which may be difficult to verify or adjudicate on an expedited basis. Colorado disagrees with CMS' perception that implementation of an expedited appeals process will not be difficult to administer and strongly suggests that the effective date of this provision be postponed until January 1, 2015.
- §431.231(c)(2) Reinstating services. Please clarify the standard of measurement for a beneficiary to "show" that an electronic notice was not received.
- §435.117(c) Deemed newborn children. Colorado applauds and shares CMS' concern for preserving health care coverage for newborns and is concerned about the public policy implications of making coverage optional when the child's mother was eligible for and receiving Medicaid in another state for the date of birth. Colorado strongly encourages CMS to work with States to avoid potential negative health care coverage consequences that might result from a patchwork approach to such optional coverage.
- §435.150(3) Former foster care children. Colorado notes that optional coverage for former foster care children from other states raises issues of potential penalty for such individuals who may have migrated to another state. Colorado strongly encourages CMS to work with States to address challenges of providing equitable coverage for this new mandatory population.
- §435 Subpart E General Eligibility Requirements. Colorado applauds and thanks CMS for the many proposed changes that will streamline and mitigate the administrative burden associated with documenting citizenship and identity. Colorado notes CMS' request for input on the retention period for such documents and recommends that such information be retained indefinitely.
- §435.952(c)(3) Use of information and requests of additional information from individuals. Please clarify if the exception for special circumstances to permit self-attestation applies to both all MAGI eligibility population groups and all non-MAGI eligibility groups.

§435.1110 Presumptive eligibility by hospitals. Please clarify if a state may limit presumptive eligibility determinations made by qualifying hospitals to those populations for whom the state provides presumptive eligibility. Also, please clarify if states may set advance notice requirements for hospitals seeking to elect such option.

§440 Subpart C Benchmark Benefit and Benchmark-Equivalent Coverage. Colorado notes the chilling effect on innovating Medicaid benefits coverage that arises from requiring enrollment of the optional expansion adults into an alternative benefit plan yet retaining the exemption those individuals who are "medically frail." Colorado also notes that the expanded definition for medically frail will likely result in greater numbers of individuals who will be exempt, thereby further eroding the state's opportunity to model innovative approaches to meeting individuals' needs.

§457 Subpart C State Plan Requirements: Eligibility, Screening, Applications and Enrollment. Please clarify whether and how the 5% disregard under Modified Adjusted Gross Income (MAGI) applies to applicants under the Children's Health Insurance Program (CHIP).

§457.360(c) Deemed newborn children. Colorado applauds and shares CMS' concern for preserving health care coverage for newborns and is concerned about the public policy implications of making coverage optional when the child's mother was eligible for and receiving coverage under CHIP in another state for the date of birth. Colorado strongly encourages CMS to work with States to avoid potential negative health care coverage consequences that might result from a patchwork approach.

Thank you for the opportunity to provide comment on concerns and suggested improvement to the proposed rules on Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes for Medicaid and Exchange Eligibility Appeals and Other Provisions Related to Eligibility and Enrollment for Exchanges, Medicaid and CHIP, and Medicaid Premiums and Cost Sharing. Should you have any questions, I can be reached at <u>Barbara.prehmus@state.co.us</u> or via telephone at (303) 866-2991.

Sincerely,

Barbara B. Prehmus, M.P.H.

Federal Policy & Rules Officer

Cc: Ms. Susan E. Birch, MBA, BSN, RN, Executive Director

Ms. Lorez Meinhold, Deputy Executive Director

